In the High Court of Uttaranchal, at Nainital
Special Appeal No. 117/2004

1- State of Uttaranchal through Secretary
Horticulture, Uttaranchal Sashan, Dehradun.

2- Director of Horticulture & Food Processing,
Udyan Bhawan, Chaubatia, Ranikhet, District
Almora.

3- Deputy Director , Udyan-cum-Officer Incharge
Udyan Bhawan, Chaubatia, Ranikhet, Almora.

4- Superintendent, Government Garden, Chaubatia,
Ranikhet, District Almora ……. Appellant

Versus

1- Bagh Singh S/o Jasodh Singh,
2- Kishan Singh S/o Madan Singh
3- Bishan Singh S/o Lachan Singh
4- Pan Deo Bist S/o Madhwanand Bist
5- Narendra Singh S/o Hayat Singh
6- Lachan Singh S/o Madan Singh
7- Har Singh S/o Prem Singh
8- Pratap Singh S/o Padam Sngh
9- Govind Ram S/o Bachi
10- Ganga Dutt Belwal S/o Amba Dutt Belwal
Nos. 1 to 10 all working on the post of Laboratory
Attendant at Horticulture and Food Processing at Udyan,
Bhawan, Chaubatia, Ranikhet,
District Almora.
11- Harak Singh S/o Joga Singh
12- Khalil Ahmed S/o Abdul Haq
Both are working on the post of laboratory Assistant in
Horticulture an Food processing at Udyan Bhawan,
Chaubatia, Ranikhet,
District Almora ……. Respondents.

Sri B.D. Kandpal, learned S.C. for the State.
Sri B.D. Upadhyaya, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 17th May, 2006.

By way of this Special Appeal the judgment and order, dated 22-7-2003 passed by the learned Single Judge of this Court in W.P. N0. 3763(S/S) of 2001 (Old No. 22626(S/S) of 1996) Bagh Singh and others Vs. State of U.P. and others has been put to challenge.

2- Brief facts of the case giving rise to this appeal are that respondents had challenged the order dated 19-8-1994, 18-5-1996, 1-6-1996 and 20-6-1996 passed by the appellants contained in Annexures 8,10,11 and 12 to the writ petition on the ground that respondents were appointed on the posts of Laboratory Attendants by the Deputy Director, Horticulture and Food Processing (Hills) Ranikhet District Almora,. All the respondents except respondents 11 and 12 were working since then on the post of Laboratory Attendants. The State of U.P. Vide order dated 3.6.1989 revised the pay scale and consequently the pay scale of the respondents was revised as Rs. 750-940. The respondents averred in the writ petition that in view of the Government Order dated 3.6.1989 an employee who has completed six years satisfactory service in the selection grade be given next promotion pay scale. The next promotional post of the Laboratory Attendant is the Laboratory Assistant, the pay scale of which is Rs. 950-1500. it was stated in the writ petition that the respondents had completed more that 25 years of service as Laboratory Attendants including six years service in the selection grade but they could not be promoted to the post of Laboratory Assistant because of non-availability of post. However the respondents be given next promotional pay scale of Rs. 950-1500 in view of the paragraph-10 of the aforesaid G.O. As State of U.P. on 19-8-1994 passed an order that the employees who have completed six years satisfactory service in the selection grade, shall be paid the next higher pay scale and not a promotional pay scale. Therefore the respondents made representation stating therein that the Laboratory Attendants were being promoted on the post of Laboratory Assistant in the pay scale of Rs. 950-1500 and in between there is no post on which they could be promoted as such in view of paragraph-10 of the G.O. dated 3.6.1989 they were entitled for the pay scale of Rs. 950-1500. The Deputy Director in pursuance of the order passed by the Government dated 19-8-94 fixed the pay scale of the respondents in the pay scale of Rs. 775-1025 vide order dated 1.6.96, 20-6-96 and 18-5-96.

3- Feeling aggrieved by the aforesaid orders the writ petition was filed before the Allahabad High Court which was transferred to this court after creation of new State;.

4- The learned Single Judge after hearing the learned counsel for the parties and having perused the material on record allowed the writ petition and quashed the orders dated 19-8-1994, 1-6-1996, 20-6-1996 and 18-5-1996, contained in Annexure 8, 10, 11 and 12, vide judgment and order dated 22.7.2003

5- Feeling aggrieved by the aforesaid judgment and order passed by the learned Single Judge of this Court the State of Uttaranchal has filed this Special Appeal.

6- Heard learned counsel for the parties and perused the record.

7- Paragraph- 10 of the G.O. dated 3-6-1989 specificallly shows that three are two types of posts one when there is no post of promotion and in these types of posts the employee will be given the next higher pay scale after completing six years satisfactory service in the selection grade. Second type of posts are those where the posts are available the employees can be given next promotion pay scale after completing six years satisfactory service in the selection grade. In the instant case the respondents were appointed as Laboratory Attendant in the pay scale of Rs. 750-940 and pay scale of Laboratory Assistant is Rs. 950-1500. In between these two pay scales there are three pay scales such as 775-1025, 825-1200 and 950- 1400. As per paragraph of Gove. Order dated 3.6.1989 in case any person who is appointed on the post to which there is no promotion and is appointed in the pay scale of Rs. 750-940 he shall be paid next higher pay scale which is Rs. 750-1050 after completing six years satisfactory service in the selection grade but in the instant case the respondents who were appointed as Laboratory Attendant and could not be promoted on the post of Laboratory Assistant because of non-availability of the posts, the Laboratory Attendants who have completed six years service in the selection grade shall be paid the promotional pay scale of Rs. 950-1500 which is provided to the Laboratory Assistants.

8- Under the aforesaid circumstances the learned Single Judge has not erred in allowing the writ petition and quashing the

Impugned orders passed by the appellants dated 19-8-1994, 1-6-1996, 20-6-1996 and 18-5-1996, contained in annexure Nos. 8, 10, 11 and 12 to the writ petition.

9- The appeal lacks merit and is liable to be dismissed.

10- Accordingly the Special Appeal is dismissed. The judgment and order dated 22.7.2003, passed by the learned Single Judge, is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB